



March 30, 2000

Ms. Lilia Ledesma-Gonzalez
Assistant City Attorney
City of McAllen
P.O. Box 220
McAllen, Texas 78505-0220

OR2000-1239

Dear Ms. Ledesma-Gonzalez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 133657.

The City of McAllen (the "city") received a request for Roel Garcia's personnel and disciplinary files, employment history, records of criminal or civil suits and internal investigation file. You claim that the internal investigation file is excepted from disclosure under section 552.108 of the Government Code. You assert that you have released the remainder of the requested information. We have considered the exception you claim and reviewed the submitted information.

Section 552.301 of the Government Code provides in part that:

- (a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.
- (b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the request.

The city received the request on December 28, 1999 and, therefore, had until January 11, 2000 to ask this office for a decision. Because the request for a decision was postmarked January 25, 2000, you failed to request a decision within the ten business day

period mandated by section 552.301(b). Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302; see *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ).

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Hancock*, 797 S.W.2d at 381; see Open Records Decision No. 630 (1994). You have not raised any specific compelling reasons to overcome the presumption that the information is public. Thus, we conclude that the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

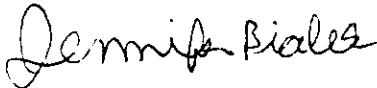
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jennifer Bialek".

Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/ljp

Ref: ID# 133657

Encl. Submitted documents

cc: Ms. Norma Dibrell
U.S. Office of Personnel
8610 Broadway, #307
San Antonio, Texas 78217
(w/o enclosures)